

BURLINGTON RESOURCES OIL & GAS CO.

IBLA 97-168

Decided April 8, 1999

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, upholding the approval of a revision of the Gallup Participating Area. NMNM 78395X.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Where, as required by the provisions of a unit agreement, BLM approves a unit revision effective as of the first of the month following the date of first authentic knowledge or information of completion of a well capable of producing unitized substances in paying quantities on which such revision is predicated, BLM's approval as of such date will be affirmed in the absence of evidence that a different effective date would be more appropriate.

APPEARANCES: W. Thomas Kellahin, Esq., Santa Fe, New Mexico, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Burlington Resources Oil & Gas Company (Burlington) has appealed from a December 4, 1996, decision by the Deputy State Director, New Mexico State Office, Bureau of Land Management (BLM), upholding approval of the Twenty-First Revision of the Gallup Participating Area, Huerfano Unit, San Juan County, New Mexico.

The Huerfano Unit Agreement (Unit Agreement) was approved by the Department on June 6, 1950. A Unit Accounting Agreement for the Huerfano Unit Area (Accounting Agreement), was entered into between the unit operator and working interest owners on January 12, 1950.

Burlington states in its Statement of Reasons (SOR) at 4 that on October 26, 1991, its predecessor, Meridian Oil, Inc. (Meridian), completed Well No. 300 as a producing gas well. On July 22, 1996, Meridian wrote

to BLM's Farmington District Office (FDO), stating that Burlington, as successor to Meridian as Unit Operator, had determined that Well No. 300, in the S½ of sec. 31, T. 27 N., R. 10 W., New Mexico Principal Meridian (NMPM) "is capable of producing unitized substances in paying quantities from the Gallup formation and thereby should be admitted to the Gallup Participating Area." 1/ Meridian enclosed with its letter "The Expansion Schedule for the Twenty-First Participating Area" describing the Participating Area and showing the percentage of unitized substances allocated to the tracts according to the ownership within the tracts. 2/

On July 25, 1996, FDO, citing Well No. 300, issued an approval for the Twenty-First Revision for the Gallup Participating Area for the Huerfano Unit, with an effective date of November 1, 1991. The revision, based on data from Well No. 300, increased the participating area by 328.18 acres, more or less, within sec. 31, T. 27 N., R. 10 W., NMPM.

By letter of August 5, 1996, Meridian notified FDO that "Burlington * * * is rescinding [the expansion] due to the fact * * * that a non-consent election was made in the Huerfano Unit #300 well." Meridian explained that according to the "Unit Operating Agreement" (presumably referring to the Accounting Agreement), working interest owners who participated (invested) in the well should recoup 150 percent of the cost of drilling, testing, completing, and equipping the well, after deducting 100 percent of the operating costs attributable to the well, before the participating area could be revised to include the new well.

The FDO replied by letter of August 12, 1996, explaining that when a well capable of producing in paying quantities is completed, it is required to be included in the participating area. The FDO further explained that the controlling authority was section 10 of the Unit Agreement, and that the Unit Agreement, not the Unit Operating Agreement (again, presumably referring to the Accounting Agreement), governed unit actions.

1/ In its letter, Meridian mistakenly referred to section "11(a) of the Unit Agreement." The Unit Agreement contains no section 11(a). However, included as Exhibit 14 to Burlington's SOR is a copy of the unit agreement for the San Juan 30-6 unit area, Rio Arriba County, New Mexico, which does contain a section 11(a). That section outlines "Participation after Discovery." In the Unit Agreement, "Participation after Discovery" is found in section 10, portions of which are quoted in this opinion. These provisions are dissimilar; each is individually tailored to individual unit circumstances.

2/ The Deputy State Director observes in his decision that "well information submitted in Burlington's original participating area revision application supports the effective date granted in the FDO's approval." (Dec. at 3.) The expansion schedule has not been included in the case file. However, aside from stating that the schedule "was incorrect" (SOR at 7), Burlington does not base its appeal on the schedule.

Under section 10 of the Unit Agreement, the Unit Operator is required, "[u]pon completion of a well * * * capable of producing unitized substances in paying quantities," to submit for approval by the

Director, the Supervisor, Commissioner and the Commission a schedule * * * of all unitized land then regarded as reasonably proved to be productive of unitized substances in paying quantities; all land in said schedule on approval * * * to constitute a participating area, effective as of the date of first production.

(Emphasis supplied.)

Section 10 further provides that the

effective date of any revision [of participating areas] shall be the first of the month following the date of first authentic knowledge or information on which such revision is predicated, unless a more appropriate effective date is specified in the schedule.

In the decision before us on appeal, BLM's Deputy State Director quoted from sections 6 and 10 of the Unit Agreement. Section 6 states in pertinent part:

6. Unit Accounting Agreement: If the Unit Operator is not the sole owner of working interests, all costs and expenses incurred in conducting unit operations hereunder and the working interest benefits accruing hereunder shall be apportioned among the owners of unitized working interests, in accordance with a unit accounting agreement by and between the Unit Operator and the other owners of such interests, whether one or more, separately or collectively. Any agreement or agreements entered into between the working interest owners and the Unit Operator as provided in this section, whether one or more, are herein referred to as the "Unit Accounting Agreement." No such agreement shall be deemed either to modify any of the terms and conditions of this unit agreement or to relieve the Unit Operator of any right or obligation established under this unit agreement, and in case of any inconsistency or conflict between this unit agreement and the unit accounting agreement, this unit agreement shall prevail.

(Emphasis supplied.) The Deputy State Director stated that "this clause unequivocally separates the Accounting Agreement from the Unit Agreement and makes the Unit Agreement the dominant contract where potential or perceived conflicts exist." (Dec. at 2.) The Deputy State Director noted that the Accounting Agreement was enacted by the working interest owners independent of BLM. For this reason, he regarded lease administration or accounting problems associated with investment adjustments as

beyond the scope of BLM's review. Finally, the Deputy State Director noted that Burlington had not disputed that the No. 300 well was a paying well and that according to the record, "the well information submitted in Burlington's original participating area revision application supports the effective date granted in the FDO's approval." (Dec. at 3.)

As noted above, the effective date in the FDO's approval was November 1, 1991. Burlington asserts that BLM arbitrarily adopted this date and that an "alternate date allowed by the Unit Agreement and required by the [Accounting Agreement]" should be used instead. Burlington asserts that the effective date should be the date on which the investors "who paid for the Huerfano Well No. 300 had recovered their costs and non-consent penalties," i.e., the drill block payout date. (SOR at 3, 4.) Burlington states that the well has not yet paid back the 150 percent investment adjustment provided by section 14 of the Agreement.^{3/} Burlington argues that BLM's effective date allows royalty owners in the participating area to share in production "prior to the date at which the working interest owners in the participating area commence to share in that same production." (SOR at 4.)

Burlington asserts that, by approving the Unit Agreement, the Department adopted the drill block payout date as "the more appropriate effective date for both royalty owners and working interest owners in a [participating area] to commence participating in production from the Drill Block." (SOR at 9.) Burlington asserts that the effective date adopted by BLM creates inequities among working interest owners and requires Burlington to construct a very complicated dual accounting system which would divide working interest owners and royalty owners into different categories of payee. (SOR at 10.)

[1] Disposition of this appeal is governed by the Unit Agreement. Section 10 of that Agreement requires that the preferred effective date of any revision "shall be the first of the month following the date of first authentic knowledge or information on which such revision is predicated."

^{3/} Section 14 of the Accounting Agreement provides for investment adjustments as between the operator and working interest owners. It provides for credit to be given to working interest owners of tracts outside the participating area which will be included in the participating area "for the intangible cost of drilling, completing and equipping any well on their respective leases." Section 14 provides further that where an extension well "was not drilled at the cost and risk of all of the Working Interest Owners in the Participating Area, or at the cost and risk of all the Working Interest Owners in the Unit Area, in the event the well is included in a Participating Area, the parties bearing the cost and risk of said well shall be entitled to a credit of 150% of the intangible cost of drilling, completing and equipping said well in the investment adjustment described in this section."

Herein, the revision was predicated on the completion of Well No. 300. Burlington does not dispute that Well No. 300 is capable of production in paying quantities nor has it established that a date set by a criterion other than that prescribed in section 10 of the Unit Agreement would be more appropriate. See Celsius Energy Co., 136 IBLA 293, 297 (1996). 4/

While the Unit Agreement is a contract between the United States and participating parties for joint development and operation of an oil and gas field, the Accounting Agreement is a private agreement among working interests and the unit operator. The Accounting Agreement prescribes how these parties will carry out their business. It addresses the mechanics of investment and the sharing of costs and expenses. Where disputes arise under the Accounting Agreement, they are matters for the parties to that agreement to work out. The BLM does not approve such an accounting agreement, is not a party to it, and therefore does not adjudicate disputes arising under it. Celsius Energy Co., *supra* at 297. Accordingly, BLM is under no obligation to link the effective date of its revision of a participating area to the rate of return of investments to working interest owners.

Burlington's allegation that BLM arbitrarily adopted November 1, 1991, to the exclusion of an alternate date allowed by the Unit Agreement and required by the Accounting Agreement, is not supported by the facts. First, the Accounting Agreement defers entirely to the Unit Agreement in matters relating to the enlargement of a participating area based on a well capable of production in paying quantities. (Accounting Agreement, secs. 1, 5(a).) Section 1 provides that in case of conflict "the provisions of the Unit Agreement shall prevail," and section 5(a), "Limitations on Unit Operator," refers to the primacy of section 12 of the Unit Agreement. That provision, entitled "Development or Operation on Non-Participating Land," provides in part:

If such well, by whomsoever drilled, results in production such that the land upon which it is situated may properly be included in a participating area, such participating area shall be established or enlarged as provided in this agreement * * * and there shall be a financial adjustment between the parties who financed the well and the working interest owners in the participating area concerning their respective drilling and other investment cost, all as provided in the unit accounting agreement.

(Emphasis supplied.) The term "drill block payout date" is not used in the Unit Agreement, or in the Accounting Agreement for that matter, and

4/ In Celsius Energy, Inc., *supra*, the Board reversed a BLM decision where BLM utilized an effective date other than the "preferred date" without providing a rationale. The Board noted that while the unit agreement in that case permitted the use of "such other appropriate date," it also clearly indicated that the "preferred date" was the first day of the month after notice of proposed expansion. Id. at 297-98.

provides no support for Burlington's argument. 5/ Finally, the fact that Burlington may be inconvenienced in accounting for production provides no authority for disturbing BLM's decision.

To the extent not specifically discussed herein, Burlington's other arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

5/ Section 11(a) of the San Juan Unit Agreement (Exh. 14, p. 9) contains references to "Drilling Blocks," and instructs the Unit Operator, upon determination of a well capable of production, to advise the Supervisor of the "Drilling Blocks upon which said well is located." In the San Juan Unit, such a well constitutes all of the land in the drilling block as a part of the participating area effective as of the date of first production. The Unit Agreement contains no such proviso.